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In re Application of:
Tadayasu Meguro et al.
Serial No.: 09/845,286
Filed: May 1, 2001
Attorney Docket No.: 35.C15514

DECISION ON PETITION TO
WITHDRAW THE HOLDING
OF ABANDONMENT

This is a decision on the "REQUEST FOR WITHDRAWAL OF ERRONEOUSLY ISSUED NOTICE OF ABANDONMENT" filed on October 12, 2004. It is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a). There is no fee for this petition.

The petition is **GRANTED**.

A final Office action was mailed on May 30, 2003. An after-final amendment was filed on September 5, 2003. The after-final amendment included a Certificate of Mailing dated September 2, 2003 making it timely under the provisions of 37 C.F.R. §§ 1.7 and 1.8. An advisory action was mailed on October 14, 2003 indicating that the after-final amendment would not be entered because it raised new issues that would require further consideration and/or search. A Notice of Abandonment was mailed on September 21, 2004. Although the Notice of Abandonment indicates that the application was abandoned in view of applicant's failure to timely file a proper reply to the advisory action of October 14, 2003, it was actually held abandoned for failure to timely file a proper reply to the final Office action mailed on May 30, 2003.

A proper reply to a final rejection under 37 C.F.R. § 1.113 may only be either (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114.

Petitioner asserts that a Request for Continued Examination (RCE) and Petition for Extension of Time (EOT) were timely filed in the United States Patent and Trademark Office (USPTO) on October 28, 2003. To support this assertion, petitioner has submitted copies of the RCE and EOT and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the RCE and EOT by the USPTO on October 28, 2003.

A review of the application file record reveals that the RCE and EOT having been acknowledged as being received in the USPTO on October 28, 2003 are not of record in the application file and cannot be located. On the other hand, Office records indicate that the fees for an RCE and a 2 month EOT were received and posted.

In any case, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Accordingly, it is concluded that the RCE and EOT were timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed September 21, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

The RCE filed with the petition on October 12, 2004 will be processed by the Technology Center 2800 support staff and the examiner will be prepare an Office action considering the after-final amendment/reply filed on September 5, 2003 as requested in the RCE.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



Richard K. Seidel, Director
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